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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,142	04/20/2001	Raymond E. Suorsa	033048-059	9523

21839 7590 12/21/2005

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EXAMINER

THOMPSON, MARC D

ART UNIT	PAPER NUMBER
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2144

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/838,142	Applicant(s) SUORSA ET AL.	
	Examiner Marc D. Thompson	Art Unit 2144	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: None.
 Claim(s) objected to: None.
 Claim(s) rejected: 22-31.
 Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.

MARC D. THOMPSON
 MARC THOMPSON
 PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant asserts definitions provided for the terms "queue" and "script" as known in the art is sufficient to distinguish the claimed invention from the applied teachings of Suzuki. It is submitted that the breadth of the currently presented claims, interpretation of a "queue" as known and defined in the art as a "data structure" as submitted by Applicant is insufficient to distinguish the disclosed Suzuki "script(s)". Given that one provided definition for claim interpretation of a script was known in the art at the time of filing as "a file of commands to be executed", it is required to properly construct the use of such a term to potentially include inherent characteristics of an associate data structure. That is to say, a "file", per se, inherently comprises a structure of data; there is no reasonable way to separate files from data sets having structure (data structure). The current breadth of the claim(s) provides interpretations which are inconsistent with the commensurate scope of the specification, even when remaining strictly in accordance with the definitions of the terms provided therein. The Suzuki reference is close enough to the purported functionality of the claimed invention to warrant sustaining of the currently set forth position. Creation and server side storage of a list of commands for (a) remote device execution, sequential transfer of the commands to the remote device(s), rebooting of the remote device(s), and resumption of the uncompleted commands as provided in the claims is simply taught by Suzuki.

In addition to the provision for the use of generalized and broadly defined queue for commands to be provide to remote unit(s), the requirement for "server side control" of any individual transmission on commands (for example, as needed or consumed) is simply not currently claimed as asserted by Applicant. The claims do not prohibit the transfer of the entirety of the queue, script, whatever, from being transferred both/either before or after rebooting state determination(s). The provision for entire lists of commands (i.e., scripts) being transferred between server and remote agent location(s) for remote command execution does not preclude retrieval/transfer/reception/etc., of these commands in a sequential fashion at the remote agent location; transferring a set of single individual commands in an arbitrary sequential order is precisely what occurs when transfer of a file or script form a server is performed to remote agent(s).

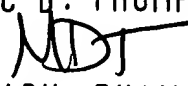
Additionally, a script can be reasonably considered a "queue of instructions/commands", since "items are [processed] in the same order in which they [are presented]". Likewise, a queue (in its entirety) can reasonably be considered to comprise a "file containing commands [or other things] to be [processed]". Hence, the definitions set forth by Applicant for claim construction are not found to be clearly convincing in terms of clarifying these terms as two distinct conceptual entities. The selected definitions seem to be hand selected to diverge an intended meaning of the of one term as used, while neglecting the common, everyday use of both terms as readily known and understood in the art at the time of invention. The breadth of these terms simply do not warrant the level of distinction set forth by Applicant in this response.

Applicant employs broad language which includes the use of words and phrases which have broad meanings in the art. In addition, Applicant has not argued any narrower interpretation of the claim language which clearly demarks metes and bounds of these particular terms, nor amended the claims significantly enough to construe a narrower meaning to these limitations. As the claims breadth allows multiple interpretations and meanings which are broader than Applicant's disclosure, the Examiner is forced to interpret the claim limitations as broadly as reasonably possible, in determining patentability of the disclosed invention. Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intend broad interpretation be given to the claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims (inter alia, In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)). The Examiner has interpreted the claims with scope parallel to the Applicant in the response, and iterates the need for the Applicant to clearly, distinctly, and uniquely claim the invention, including enhanced definition of terms, properly ascertainable metes and bounds of the terms used in the claims and specification for proper claim construction, and a clear, defined, and decisive description of the invention in the claims. Lastly, the current claims infer coverage breadth which is inconsistent with breadth of the disclosure and are not found distinguishable above the prior art of record.

Applicant has had multiple opportunities to amend the claimed subject matter, and has generally failed to modify the claim language to distinguish over the prior art of record by clarifying or substantially narrowing the claim language. Applicant apparently intends that a broad interpretation be given to the claims and the Examiner has adopted such in the present and previous Office action rejections (In re Prater and Wei, 162 USPQ 541 (CCPA 1969), and MPEP § 2111).

Lastly, further deficiencies in the claims are also evident, including potential issues with proper antecedent basis (inter alia, "said device" is claim 23) which prohibit allowance of the claims at this point, even if distinguishing subject matter is determined.

The Office minimally stands behind the statements of statutory basis set forth in the final rejection.

MARC D. THOMPSON

PRIMARY EXAMINER